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DOCKETED

OCT 30 2006

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES COMPANY FOR
AN EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
WASTEWATER SERVICE.

DOCKET NO. WS-02987A-04-0288

**MOTION REQUESTING A
PROCEDURAL CONFERENCE**

Johnson Utilities, LLC, ("Johnson" or the "Company") hereby moves that a Procedural Conference be set in this matter for the reasons set forth herein.

1. On March 14, 2006, Johnson filed an Application to Amend Decision No. 68237 (the "Decision") requesting authority to file a Letter of Credit for \$500,000 in lieu of filing a Performance Bond as required by the Decision.

2. On April 21, 2006 the Commission Staff filed Staff's Response to Motion to Amend Decision No. 68237 indicating that the Letter of Credit "conforms sufficiently to the ordered Performance Bond to be acceptable".

3. Subsequently the Commission determined that an evidentiary hearing was necessary to discuss the differences between Letters of Credit and Performance Bonds. During the course of that hearing, the Company's Executive Vice President, Brian P. Tompsett, testified, among other things, that the Company was having difficulty obtaining a Performance Bond and

1 that due to that difficulty and the higher cost, the Company had filed the subject Letter of Credit.
2 Also during that hearing, expert witnesses for both parties testified that the Letter of Credit was
3 in many ways superior to the Performance Bond, but suggested certain revisions to the form of
4 the Letter of Credit.

5 4. At the conclusion of the hearing, the Administrative Law Judge directed the
6 parties to meet off the record and to submit recommended forms of language for the Letter of
7 Credit and the ordering paragraphs in the requested Amended Decision. The parties did in fact
8 meet, but Johnson and Staff could not agree upon the language. Therefore, the Company and
9 Staff submitted separate recommendations on October 5, 2006, and October 10, 2006,
10 respectively. The Administrative Law Judge issued his Recommended Opinion and Order (the
11 "ROO") on October 19, 2006.

12 5. The Company has concerns with the form of the ROO, and is of the opinion that
13 certain of the Findings of Fact and the Conclusions of Law contained therein are not supported
14 by the record in this proceeding. As examples, the ROO speaks of the "Sonoran litigation". Mr.
15 Tompsett testified in this proceeding that the Sonoran litigation had been settled with prejudice.
16 (See attached Order of the Superior Court dated February 24, 2006, and refer to the Company's
17 Compliance Filing dated April 4, 2006). Nor was there any evidence that there was a need for
18 "protection" of the customers from any action of the Company or Mr. Johnson. Additionally,
19 there was no evidence of even a remote possibility that the Company, Mr. Johnson, or any of the
20 affiliated companies would file bankruptcy.

21 6. The alternative recommendations by the Staff and Company in this Docket appear
22 to attempt clarifying the Letter of Credit language and ordering paragraphs, without resolution of
23 the larger issue before the Commission which was raised in the evidentiary hearing, namely, the

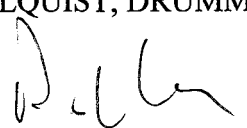
1 ability of the Commission to utilize the Performance Bond or Letter of Credit proceeds for the
2 intended purpose, to protect the customers. The Company was of the opinion those issues were
3 to be addressed in the Generic Docket the Commission has opened in that regard. However, the
4 ROO proposes to adopt language that appears to attempt circumvention of the alleged statutory
5 prohibition.

6 7. To assist the Company in responding to the ROO, the Company believes that a
7 Procedural Conference among the parties would be beneficial to discuss the ROO and
8 preparation of the possible Exceptions by the parties for the Commissions consideration. The
9 Company also believes a short extension within which to file comments/exceptions resulting
10 from any action at the Procedural conference would be appropriate. The Company recognizes
11 and agrees such a Procedural Conference may extend the date at which the Commission might
12 consider this matter beyond the presently scheduled November 21, 2006 Open Meeting. The
13 Company hereby agrees to the rescheduling of that consideration to a later Open Meeting.

14 WHEREFORE, the Company respectfully requests that the Administrative Law Judge set
15 a Procedural Conference for the Judge and parties to further discuss the basis for the
16 Recommended Opinion and Order and clarification of the alternatives, and further requests that
17 the deadline for filing Exceptions to the ROO be extended a minimum of five (5) business days
18 from the Procedural Conference or from any amended ROO, whichever occurs later.

1 RESPECTFULLY submitted this 20th day of October 2006.

2 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

3
4 By: 
5 Richard L. Sallquist
6 4500 South Lakeshore Drive, Suite 339
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8 Phone: (480) 839-5202
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10 Original and fifteen copies of the
11 foregoing filed this 20th day
12 of October 2006:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

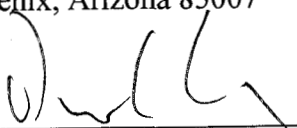
17 A copy of the foregoing
18 mailed/hand delivered this
19 20 day of October 2006, to:

20 Brian C. McNeil
21 Arizona Corporation Commission
22 Executive Secretary
23 1200 West Washington Street
Phoenix, Arizona 85007

Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

1 Legal Division
2 Arizona Corporation Commission
3 1200 West Washington
4 Phoenix, Arizona 85007



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Leo R. Beus/AZ Bar No. 002687
Linnette R. Flanigan/AZ Bar No. 019771

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

**LENNAR COMMUNITIES
DEVELOPMENT, INC., an Arizona
corporation,**

Plaintiff,

vs.

**SONORAN UTILITY SERVICES, L.L.C., an
Arizona limited liability company; GEORGE
H. JOHNSON and JANE DOE JOHNSON,
husband and wife; BOULEVARD
CONTRACTING COMPANY, INC., an
Arizona corporation; PINAL COUNTY
BOARD OF SUPERVISORS, a political
subdivision of the State of Arizona; LIONEL
D. RUIZ, in his capacity as a member of the
Pinal County Board of Supervisors; SANDIE
SMITH, in her capacity as a member of the
Pinal County Board of Supervisors; DAVID
SNIDER, in his capacity as a member of the
Pinal County Board of Supervisors; JIMMIE
KERR, in his capacity as a former member of
the Pinal County Board of Supervisors; THE
387 WATER IMPROVEMENT DISTRICT, a
Pinal County Improvement District and a
political subdivision of the State of Arizona;
THE 387 WASTEWATER IMPROVEMENT**

Case No.: CV 2006 00012

NOTICE OF SETTLEMENT

1 DISTRICT, a Pinal County Improvement
2 District and a political subdivision of the State
3 of Arizona,

4 Defendants.

5 NOTICE IS HEREBY GIVEN that Plaintiff Lennar Communities Development, Inc.
6 and Defendants Pinal County Board of Supervisors, the 387 Water Improvement District, the
7 387 Wastewater Improvement District, Lionel D. Ruiz, Sandie Smith, David Snider, and
8 Jimmie Kerr have reached a settlement of this matter. Once the parties finalize all settlement
9 documentation, a Stipulation for Dismissal will be submitted to the Court.

10 DATED this 21st day of February 2006.

11 BEUS GILBERT PLLC

12 By Linnette R. Flanigan
13

14 Leo R. Beus
15 Linnette R. Flanigan
16 4800 North Scottsdale Road
17 Suite 6000
18 Scottsdale, AZ 85251
19 Attorneys for Plaintiff
20
21
22
23
24
25

1 Original of the foregoing filed and a
2 copy mailed this 21st day
of February 2006 to:

3 Honorable William J. O'Neil
4 Pinal County Superior Court
5 Division I
6 P.O. Box 847
7 Florence, AZ 85232

8 Copy of the foregoing mailed this 21st
9 day of February 2006 to:

10 Lawrence C. Wright
11 **WRIGHT & ASSOCIATES**
12 Suite 3500 Financial Plaza
13 1201 South Alma School Road
14 Mesa, AZ 85210

15 Thomas K. Irvine
16 **IRVINE LAW FIRM, P.A.**
17 1419 North Third Street, Suite 100
18 Phoenix, AZ 85004
19 *Attorneys for Defendant Sonoran*

20 James M. Jellison
21 **SCHLEIER JELLISON SCHLEIER, P.C.**
22 3101 North Central, Suite 1090
23 Phoenix, AZ 85012
24 *Attorney for Defendants Pinal County Board of Supervisors & The 387 Districts*

25 Lat J. Celmins
Blake E. Whiteman
Michael L. Kitchen
Margrave Celmins, P.C.
8171 East Indian Bend, Suite 101
Scottsdale, AZ 85250
Attorneys for Defendants Johnson & Boulevard

26 Wusa L. Rahn

FILED FINAL COUNTY
SUPERIOR COURT
JUSTI YOUTSEY RUIZ CLERK

FEB 24 2006

1 Lat J. Celmins (004408)
 2 Michael L. Kitchen (019848)
 3 MARGRAVE CELMINS-WHITEMAN, P.C.
 4 8171 East Indian Bend, Suite 101
 5 Scottsdale, Arizona 85250
 6 Telephone (480) 994-2000
 7 Facsimile (480) 994-2008
 8 Attorneys for Defendants George H. Johnson
 9 and Jana Johnson and Boulevard Contracting Company, Inc.

8 SUPERIOR COURT OF ARIZONA
 9 COUNTY OF PINAL

8 LENNAR COMMUNITIES
 9 DEVELOPMENT, INC., an Arizona
 10 corporation,

10 Plaintiff,

11 v.

Case No. CV200600012

ORDER

12 SONORAN UTILITY SERVICES, L.L.C.,
 13 an Arizona limited liability company;
 14 GEORGE H. JOHNSON and JANE
 15 DOE JOHNSON, husband and wife;
 16 BOULEVARD CONTRACTING
 17 COMPANY, INC., an Arizona
 18 corporation; FINAL COUNTY BOARD
 19 OF SUPERVISORS, a political
 20 subdivision of the State of Arizona;
 21 LIONEL D. RUIZ, in his capacity as a
 22 member of the Final County Board of
 23 Supervisors; SANDIE SMITH, in her
 24 capacity as a member of the Final
 25 County Board of Supervisors; DAVID
 26 SNIDER, in his capacity as a member
 27 of the Final County Board of
 28 Supervisors; JIMMIE KERR, in his
 capacity as a former member of the
 Final County Board of Supervisors;
 THE 387 WATER IMPROVEMENT
 DISTRICT, a Final County
 Improvement District and a political
 subdivision of the State of Arizona;
 THE 387 WASTEWATER
 IMPROVEMENT DISTRICT, a Pina
 County Improvement District and a
 political subdivision of the State of
 Arizona,

Defendants.

(Assigned to the Honorable
 William J. O'Neil)

1 GEORGE H. JOHNSON, a married
2 man

3 v.

4 Counterclaimant,

5 LENNAR COMMUNITIES
6 DEVELOPMENT, INC., an Arizona
7 corporation; LENNAR CORPORATION,
8 a Delaware corporation; ALAN JONES
9 and JANE DOE JONES, husband and
10 wife; MARK BITTEKER and JANE DOE
11 BITTEKER, husband and wife; JOHN
12 SUTHERLAND and JANE DOE
13 SUTHERLAND, husband and wife;
14 JOHN DOES and JANE DOES 1-X;
15 ABC PARTNERSHIPS 1-X; ABC
16 LIMITED LIABILITY COMPANIES; XYZ
17 CORPORATIONS 1-X,

18 Counterdefendants,

19 Pursuant to the parties' Stipulation and good cause appearing therefor,

20 **IT IS ORDERED** that the above-entitled action shall be and is dismissed
21 with prejudice as to all claims against Defendants George H. Johnson and Jana
22 Johnson and Boulevard Contracting Company, Inc. only, and as to all
23 counterclaims filed by George Johnson against Lennar Communities
24 Development, Inc., Lennar Corporation, Alan Jones and Jodie Jones, husband
25 and wife, Mark Bittaker and Tamara Bittaker, husband and wife, and John
26 Sutherland, and an Order of Dismissal be entered accordingly, each party to bear
27 its own attorney's fees and costs.

28 **WILLIAM J. O'NEIL**

Honorable William J. O'Neil
Judge of the Superior Court

FILED PINAL COUNTY
SUPERIOR COURT
JESSIE YOUTSEY RUIZ CLERK

FEB 28 2006

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*Attorneys for Defendants George H. Johnson
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**SUPERIOR COURT OF ARIZONA
COUNTY OF PINAL**

**LENNAR COMMUNITIES
DEVELOPMENT, INC.,** an Arizona
corporation,

Case No. CV200600012

Plaintiff,

**STIPULATION FOR DISMISSAL
WITH PREJUDICE AND
ORDER**

v.

*(Assigned to the Honorable
William J. O'Neil)*

SONORAN UTILITY SERVICES, L.L.C.,
an Arizona limited liability company;
**GEORGE H. JOHNSON and JANE
DOE JOHNSON,** husband and wife;
**BOULEVARD CONTRACTING
COMPANY, INC.,** an Arizona
corporation; **PINAL COUNTY BOARD
OF SUPERVISORS,** a political
subdivision of the State of Arizona;
LIONEL D. RUIZ, in his capacity as a
member of the Pinal County Board of
Supervisors; **SANDIE SMITH,** in her
capacity as a member of the Pinal
County Board of Supervisors; **DAVID
SNIDER,** in his capacity as a member
of the Pinal County Board of
Supervisors; **JIMMIE KERR,** in his
capacity as a former member of the
Pinal County Board of Supervisors;
**THE 387 WATER IMPROVEMENT
DISTRICT,** a Pinal County
Improvement District and a political
subdivision of the State of Arizona;
**THE 387 WASTEWATER
IMPROVEMENT DISTRICT,** a Pinal
County Improvement District and a
political subdivision of the State of
Arizona,

Defendants.

1 GEORGE H. JOHNSON, a married
2 man

3 v.

Counterclaimant,

4 LENNAR COMMUNITIES
5 DEVELOPMENT, INC., an Arizona
6 corporation; LENNAR CORPORATION,
7 a Delaware corporation; ALAN JONES
8 and JANE DOE JONES, husband and
9 wife; MARK BITTEKER and JANE DOE
10 BITTEKER, husband and wife; JOHN
11 SUTHERLAND and JANE DOE
12 SUTHERLAND, husband and wife;
13 JOHN DOES and JANE DOES I-X;
14 ABC PARTNERSHIPS I-X; ABC
15 LIMITED LIABILITY COMPANIES; XYZ
16 CORPORATIONS I-X,

Counterdefendants.

13 Lennar Communities Development, Inc., Lennar Corporation, Alan and
14 Jane Doe Jones, Mark and Jane Doe Bittaker, John and Jane Doe Sutherland,
15 George and Jana Johnson, and Boulevard Contracting Company, Inc. (collectively
16 the "Parties"), through their respective counsel, hereby stipulate that the above-
17 entitled action has been settled by the Parties. All claims against George H.
18 Johnson and Jana Johnson and Boulevard Contracting Company, Inc. only, and
19 all counterclaims filed by George Johnson against Lennar Communities
20 Development, Inc., Lennar Corporation, Alan and Jodie Jones, Mark and Tamara
21 Bittaker, John Sutherland shall be dismissed *with* prejudice and the parties
22 request that an Order of Dismissal be entered accordingly, each party to bear its
23 own attorney's fees and costs. This dismissal relates to the aforementioned
24 Parties only, and has no effect on any claim pending against any other party to
25 the lawsuit.
26
27
28

1 DATED this 17th day of February, 2006.

2
3 BEUS GILBERT

4 Leo Beus
5 Attorneys for Lennar
6 Communities Development,
7 Inc., Lennar Corporation
8 Alan Jones and Jodie Jones,
Mark Bitteker and Tamara
Bitteker and John Sutherland

MARGRAVE CELMINS WHITEMAN, P.C.

Lat J. Celmins
Michael L. Kitchen
Attorneys for Johnson and
Boulevard Contracting Company, Inc.

9 COPY of the foregoing mailed/
10 hand-delivered this 17th day
of February, 2006 to:

11 Honorable William J. O'Neil
12 FINAL COUNTY SUPERIOR COURT
13 971 North Jason Lopez Circle, Bldg. A
Florence, Arizona 85232

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Phoenix, Arizona 85004

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23 N:\WP50\JOHNSON\LENNAR\Stipulation Dismissal.wpd
24 February 17, 2006